

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Mortgage Originator  
License of WealthSpring Mortgage  
Corp., Lic. No. 20188454

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on October 4, 2007, for a prehearing conference at the Office of Administrative Hearings, 600 North Robert Street, Saint Paul, MN. The prehearing conference was held pursuant to a Notice of and Order for Hearing and Order for Prehearing Conference, dated August 17, 2007.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("Department"). The Respondent, WealthSpring Mortgage Corporation, did not appear in person or by counsel. The record closed upon the Respondent's default on October 4, 2007.

**STATEMENT OF ISSUES**

1. By changing the amount of a loan without the borrowers' knowledge did Respondent engage in a fraudulent, deceptive or dishonest act and demonstrate untrustworthiness, financial irresponsibility and incompetence, in violation of Minn. Stat. § 58.12, subd. 1 (b)(iv) and (v)?<sup>1</sup>

2. By contacting the lender and stating that the borrowers' loan was not approvable, did the Respondent demonstrate untrustworthiness and incompetence, in violation of Minn. Stat. § 58.12, subd. 1 (b)(2)(iv) and (v)?

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<sup>1</sup> As the citation appeared in the Notice Of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges. The correct citation is Minn. Stat. § 58.12, subd. 1 (b)(2)(iv) and (v). Unless otherwise noted, all statutes are cited to the 2006 edition.

3. Did the Respondent demonstrate incompetence by unreasonably delaying the processing of a residential mortgage application, in violation of Minn. Stat. § 58.13, subd. 3?<sup>2</sup>

4. By cancelling the appraisal of the borrowers' property, did the Respondent unreasonably delay the processing of a residential mortgage application, in violation of Minn. Stat. § 58.13, subd. 3?<sup>3</sup>

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On August 17, 2007, a copy of the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges was delivered via first class and certified mail to WealthSpring Mortgage Corporation, 5951 Earle Brown Drive, Suite 300, Brooklyn Center, MN 55430, the last known address on file with the Department, as appears from an Affidavit of Service by First Class Mail on file herein. The mailing was not returned to the Department.

2. The Respondent failed to appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and it did not request a continuance or any other relief.

3. The Notice of and Order for Hearing and Order for Prehearing Conference contained the following informational warning:

Respondent's failure to appear at the prehearing conference may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

4. The Order to Show Cause stated that "Respondent must show cause why its mortgage originator's license should not be revoked or suspended and why it should not be subject to a civil penalty, as provided for in Minn. Stat. § 45.027, subd. 6 (2006)."

5. Because Respondent failed to appear, it is in default.

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<sup>2</sup> As the citation appeared in the Notice Of and Order fro Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges. The correct citation is Minn. Stat. § 58.13, subd. 1 (3).

<sup>3</sup> *Id.*

6. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 58.12, 45.027, subd. 1, 45.024, and 14.50.

2. Respondent received due, proper and timely notice of the charges against it, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of its failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. By changing the amount of a loan without the borrowers' knowledge Respondent engaged in a fraudulent, deceptive or dishonest act and demonstrated untrustworthiness, financial irresponsibility and incompetence, in violation of Minn. Stat. § 58.12, subd. 1 (b)(2)(iv) and (v).

7. By contacting the lender and stating that the borrowers' loan was not approvable, the Respondent demonstrated untrustworthiness and incompetence, in violation of Minn. Stat. § 58.12, subd. 1 (b)(2)(iv) and (v).

8. The Respondent demonstrated incompetence by unreasonably delaying the processing of a residential mortgage application, in violation of Minn. Stat. § 58.13, subd. 1 (3).

9. By cancelling the appraisal of the borrowers' property, the Respondent unreasonably delayed the processing of a residential mortgage application, in violation of Minn. Stat. § 58.13, subd. 1 (3).

8. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Commerce take adverse action against Respondent's license, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated this 18th day of October, 2007.

/s/ Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Reported: Default (not recorded)

### **NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Murphy, Deputy Commissioner, Attn: Sue Jensen; Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.